Supreme Court, U.S.
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No. 07-

IN THE

Supreme Court of the United States

PAUL BAGHERPOUR,

Petitioner,

v.

KENNETH SNYDER and JACQUELINE SNYDER,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. Did the United States District Court for the Eastern District of Pennsylvania, and subsequently the United States Court of Appeals for the Third Circuit confirming the said Lower Court interpret State law, in particular the Pennsylvania Human Relations Act (PHRA) in such manner as to expose the Petitioner to an unlawful abridgement of free speech?

II. Did the United States District Court for the Eastern District of Pennsylvania and subsequently the United States Court of Appeals for the Third Circuit misinterpret and unduly expand this Court's ruling in *Kolstad v. The American Dental Association*, 527 U.S. 526, 119 S. Ct. 2118, 144 L. Ed. 2d 494 (1999) by permitting recovery of punitive damages against a civil defendant without an indication that he or she acted beyond mere willful intent?

LIST OF PARTIES

I. The Petitioner is Paul Bagherpour (a/k/a Farshid Bagherpour), a party Defendant in the proceedings below.

II. Respondents are Kenneth Snyder and Jacqueline Snyder, his wife, who were Plaintiffs in the proceedings below.

III. Dr. Tawoos Bazargani was a party Defendant in the proceedings below, and as of the date of this Petition has not participated in any proceeding before this Court.

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STATEMENT OF JURISDICTION

On June 22, 2007, the United States Court of Appeals for the Third Circuit issued a judgment affirming the judgment of the U.S. District Court for the Eastern District of Pennsylvania; and subsequently, on July 5, 2007, Petitioner, Paul Bagherpour, filed a Petition for Panel Re-Hearing and/or for En Banc Determination of the aforesaid decision.

On July 20, 2007, the United States Court of Appeals for the Third Circuit denied a Petition for Re-Hearing.

This Court may exercise jurisdiction in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

STATUTES

The particular statutory provision, which is the focus point of this case, is the Pennsylvania Human Relations Act which states, *in alia*: "It shall be an unlawful discriminatory practice ... for any person to ... make any inquiry or elicit any information ... concerning religious creed or ancestry — in connection with the lease of any housing accommodation." 43 P.S. § 955(h)(6).

The statute which is directly applicable to the issue of punitive damages is the Fair Housing Act as amended, 42 U.S.C. § 3613(c) which states: "In a civil action ... the court may award to the plaintiff actual and punitive damages and ... may grant as relief as the court deems appropriate ... any other order ..."

STATEMENT OF THE CASE

I. In this case, Kenneth and Jacqueline Snyder filed suit against Defendants, Tawoos Bazargani and Paul Bagherpour, under the Federal Civil Rights Statutes, incorporating the Pennsylvania Human Relations Act (hereafter "PHRA"), seeking compensatory and punitive damages for an alleged discrimination in the Defendants' refusal to rent a condominium to them. Prior to trial, Plaintiffs (hereinafter "Snyders") filed a Motion for Partial Summary Judgment, which was answered by Defendant, Paul Bagherpour. The Motion sought judgment on the issue of statutory liability regardless of intent. The Court below granted partial summary judgment to the Snyders.

II. After a Trial before eight jurors on June 14 and June 15, 2005, a verdict was returned in favor of the Snyders against, *inter alia*, Defendant, Paul Bagherpour, in the amount of $20,000.00 compensatory damages, and $30,000.00 punitive damages. Petitioner has averred that the verdict against him for $20,000.00 compensatory damages (actually one-half of $40,000.00 against both Defendants) is clearly against the great weight of the evidence submitted at the Trial.

In essence, Petitioner alleges that the Snyders produced no substantive evidence of discrimination independent of Paul Bagherpour's technical violation of the PHRA when he made an inquiry into their religious background in connection with the rental of the condominium in Philadelphia. Specifically lacking in any of the testimony and evidence was the issue of actual intent or motive. At no time during the Trial did any

party or witness testify as to why the Defendants refused to rent this condominium other than Defendants' explanation that they desired no pets on the premises, which the Snyders insisted on keeping.

It is also averred that, if the verdict is to stand, the amount awarded for compensatory damages is excessive and unreasonable, because the award of $40,000.00 to compensate the Snyders for their loss is based upon no hard evidence whatsoever. They only testified that they were upset, disturbed, and, in the case of Kenneth Snyder, surprised and angered by Mr. Bagherpour's inquiry. Accordingly, the decision to award compensatory damages in the amount of $40,000.00 was entirely disproportionate to the "injury" sustained.

III. Petitioner finally, and perhaps most importantly, avers that punitive damages awarded were unwarranted and unjustified, because punitive damages are not available in Pennsylvania under the applicable state law. Even if the Court operates under the theory that the punitive damages would be available for violation of the Fair Housing Act, only conduct which is extreme or clearly egregious qualifies.

After the Court concluded with the Jury instructions, defense counsel raised the issue of punitive damages noting that the instruction only used language such as "intentional." It was pointed out that there should be additional language such as malice or wantonness associated in the requirement for punitive damages; however, the Court declined to change the instructions.

REASONS FOR GRANTING THE PETITION

The judgment of the United States Court of Appeals for the Third Circuit should be reviewed by this Court, because of the following reasons set forth in the Argument below.

I. Misconstruction and Misapplication of State Law

In its Opinion below, the Court of Appeals states that the Petitioner does not cite any authority contra the proposition that 43 P.S. § 955(h)(6) makes illegal the mere inquiry into a prospective tenant's religious affiliation and "does not make this an unlawful discriminatory practice without regard to the purpose of the inquiry." The Court then further states that the Supreme Court of Pennsylvania would apply this law "in accordance with its plain meaning." This reasoning is the basis of supporting the granting of partial summary judgment by the Trial Court, and which in turn tainted the entire jury trial. This is because the jurors were lead to believe that Defendant, Paul Bagherpour, had already acted in violation of the statute. Throughout the Trial, and particularly at the end, there was direction from the Judge that the actual intent of Mr. Bagherpour, or his motive, could perhaps mitigate his liability; nevertheless, under these circumstances, the Defendant began the proceedings in an uphill battle to prove a negative, namely that he did not mean to discriminate against the Snyders at all.

The Court of Appeals raised the issue as one of plain-language interpretation. However, this reasoning sidesteps the thrust of Petitioner's argument. Any time

the single utterance of any person is isolated from its context and removed from the intent behind it, or the scienter of the speaker, various conclusions derived therefrom may be inherently suspect. Numerous examples can be offered which would nullify the contrary position. Also, this Court has historically looked askance at a "mere stray remark" as establishing direct evidence of discriminatory intent. *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

If hypothetically Mr. Bagherpour had, in fact, signed the Snyders to the condominium lease after all, and the deal had been concluded; then, Bagherpour asks the Snyders: "By the way, what is your religion?" The response being the same and everything else being the same, except for the fact that the deal was consummated, the so-called religious inquiry, even though "in connection with the lease of housing accommodation," creates only a technical violation, but an actionable complaint could arise under the statute.

Another hypothetical is even more relevant today. Mr. Bagherpour, in this instance, is given direction to try and recruit as tenants people of the Jewish faith. The reason is not relevant; however, the Landlord may perversely believe that these people are more financially dependable; or altruistically desires to keep the neighborhood heterogenous and to encourage diversity. There may be no evil motive in these examples, but the real issue is whether or not the derivative question constitutes "discrimination."

In fact, what we are dealing with is the subtlety and nuance of language, its implications and inferences,

usually the basis of subjective interpretation. But the reasoning of the Court of Appeals, and the Trial Court below, would remove all of this context and present these words in a vacuum. This is always dangerous, and clearly skirts on the edge of unconstitutional abridgement of free speech. There should always be the opportunity of raising "non-invidious" reasons for refusing to rent. *Bachman v. St. Monica's Congregation*, 902 F.2d 1259 (7th Cir. 1990).

II. Punitive Damages

In *Kolstad v. American Dental Association*, 527 U.S. 526, 119 S. Ct. 2118, 144 L. Ed. 2d 494 (1999), this Court established a bright-line rule concerning the circumstances under which a jury may consider a request for punitive damages in discrimination cases. The decision involved employment discrimination; however, it was broad enough to also include the FHA. This Court stated that "Where there is no evidence that gives rise to an inference of actual malice or conduct sufficiently outrageous to be deemed equivalent to actual malice, the trial court need not and indeed should not submit the issue of punitive damages to the jury." [citation] 527 U.S. at 539.

In the same decision, this Court also stated the following:

> Most often, however, eligibility for punitive awards is characterized in terms of a defendant's motive or intent [citation] indeed, the justification of exemplary damages lies in the evil intent of the defendant [citation]. Accordingly, a positive element of conscious wrongdoing is always required.

> Egregious misconduct is often associated with the award of punitive damages, but the reprehensible character of the conduct is not generally considered apart from the requisite state of mind.

527 U.S. at 538.

The Court of Appeals below based most of its decision on the Third Circuit case of *Alexander v. Riga*, 208 F.3d 419 (3rd Cir. 2000). In that case, the U.S. Court of Appeals stated that if a jury were to find a violation under the Fair Housing Act, it "necessarily encompasses a finding of intentional discrimination [and] the plaintiffs need not also demonstrate that the conduct was particularly egregious or malicious in order to obtain punitive damages." 208 F.3d at 431. From this statement, it is clear that the Lower Court in this case concluded that Mr. Bagherpour's mere technical violation of the PHRA is sufficient to impose his eligibility for punitive damages regardless of the state of mind.

The result of these interpretations is that, from Mr. Bagherpour's singular utterance of a prohibited inquiry, it removes as a consideration into his transgression any and all motive or willfulness. This is clearly beyond the holding in the *Kolstad* case.

Conceding that the decision in *Alexander v. Riga* was correct, then it is still, nevertheless, inapplicable to the facts of the instant case. In the aforesaid opinion, the Lower Court and the jury clearly found intentional discrimination, and the decision stated the following:

> The Alexanders and the FHP presented evidence that Mrs. Riga persistently refused to deal with African Americans, as opposed to whites, and represented that an apartment was not available for inspection or rental, when it was. The Alexanders described in saddening details the deceptions to which they were subjected and the consequent mortification they suffered. Mrs. Riga told them that "they had just missed" the apartment listed in an advertisement on Sunday, the day before. When the same advertisement appeared the following Sunday, Mr. Alexander asked a friend to call. The friend was told that the apartment was available.

208 F.3d at 431-432. Of course, every decision in every case is based on different factual circumstances; however, in this case, the facts of *Alexander v. Riga* as opposed to Mr. Bagherpour's insignificant question are so dissimilar, as to parallel the difference between night and day.

Furthermore, in the *Alexander v. Riga* opinion, the Court of Appeals specifically stated the following:

> The Supreme Court in *Kolstad* did observe that the mere existence of a civil rights violation is not a guarantee of eligibility for punitive damages *because a defendant might not be aware of the federal law he or she violated*. . . These exceptions, however, do not apply to the Rigas in this case. Here, there is not any suggestion that Mrs. Riga did not

> know that it was illegal and had been for 30 years to discriminate on the basis of race in housing.

208 F.3d at 432 (emphasis added).

In the instant case, there is not a scintilla of evidence that the Petitioner, Paul Bagherpour, had either actual or implied knowledge of the Fair Housing Act or the PHRA. He was an immigrant whose command of English was limited, and he was not a licensed real estate broker or agent. In fact, the evidence shows that, even though technically he was acting as the Co-Defendant's "agent," he was motivated by friendship, and because the landlord, Dr. Bazargani, had difficulty in renting the condominium on her own. The **only** evidence at all which would imply that he acted with discriminatory intent, is the question itself he put to Kenneth Snyder inquiring as to his religion.

Although the *Alexander v. Riga* case was decided within one year of the U.S. Supreme Court's decision in *Kolstad*, three years later, the U.S. Supreme Court again addressed the issue of punitive damages in *State Farm Mutual Auto Ins. Co. v. Campbell*, 538 U.S. 408, 123 S. Ct. 1513, 155 L. Ed. 2d 585 (2003). In that case, this Court juxtaposed the punitive damages to the actual harm inflicted upon the plaintiff, and the relative penalties that could be imposed for comparable misconduct. Although the actual harm inflicted on the Plaintiff in the instant case is reduced to him being angry and/or upset, there is no hard evidence upon which to base this "emotional distress."

Also, PHRA calls for fines imposed by the state agency in the amount of $500.00 per violation. In the *State Farm* decision, this Court, under the third guidepost imposed to justify punitive damages, held that when evaluating the difference between the punitive damages awarded by a jury and the civil penalties authorized or imposed in comparable cases, the State law could have imposed a $10,000.00 fine against the insurance carrier for an act of fraud. Therefore, the millions of dollars awarded in punitive damages against State Farm was excessive. The decision in *State Farm v. Campbell* was based upon the constitutional due process standard. More importantly, under State law, PHRA does not prescribe punitive damages as a civil remedy (*Hoy v. Angelone*, 720 A.2d 745 (Pa. 1998). Punitive damages of $40,000.00 in comparison to a $500.00 fine is a gross inequity.

The Court of Appeals' opinion in this matter also addresses the following regarding failure of the District Court charge to the jury; that they must consider "not only intentional" but "wanton and reckless" conduct in order to impose punitive damages. The Opinion stated: "The District Court did not *abuse its discretion* in declining to give [defense counsel's instruction]" (emphasis added). The error in this statement is that in *Alexander v. Riga*, it was stated: "Whether there is sufficient evidence to support a punitive damages award is a question of law *which we review de novo* [citation]." 208 F.3d at 430 (emphasis added).

Accordingly, it was the obligation of the Court of Appeals to review the imposition of punitive damages not merely as an issue regarding abuse of discretion by the Lower Court. The Court was obligated to determine reasonableness on its own merits. *See also Cooper Industries v. Leatherman Tool Group*, 532 U.S. 424 (2001).

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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